IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.408/2006

Decided on. 30.5.2007

Todar and another. **…Petitioners.**

Versus

State of H.P. & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes*

For the petitioner : **Mr. G.R. Palsara, Advocate**

For the respondent No.1 **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Meenakashi Sharma, Dy. Advocate Generals.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the land of the petitioners bearing khasra No. 913 measuring 0-0-9 bighas situated in Mohal Gohar, Illqua Machhrot, Tehsil Chachoit, District Mandi, H.P. had been utilized by the HPPWD for the construction of Kandha Road on Jiuni Khad at Gohar in the year 1991-92. They had served a notice upon the respondents for initiating acquisition proceedings for acquiring the land measuring 0-0-9 bighas. They had filed a civil suit No. 104/2001 in the Court of learned Sub Judge Ist Class, Chachoit at Gohar, District Mandi. The learned Sub Judge had dismissed the suit being time barred as well as not maintainable on 16.1.2003. They preferred the appeal before the learned Additional District Judge, Mandi on 20.7.2005 against the judgment passed by the learned Sub Judge on

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

16.1.2003. They preferred an application under order 23 rule 3 read with section 151 of the Code of Civil Procedure seeking permission of the Court to withdraw the appeal/civil suit with liberty to institute fresh suit in respect of the subject matter of the suit already filed. The learned Additional District Judge, Mandi had permitted the petitioners to withdraw the appeal as well as the suit with permission to file fresh suit on the same cause of action subject to cost of Rs. 2,000/-. The respondents have filed the reply to the writ petition stating therein that the petitioners were allotted old khasra No.495/1 now 183/1 measuring 0-2-9 bighas in exchange of the land taken by the department for the construction of said bridge. The respondents have denied the running of the Gharat in the year 1991-92. The respondents have not stated anything with regard to khasra No. 913 measuring 0-0-9 bighas on which the bridge had been constructed.

Mr. G.R. Palsara, Advocate appearing on behalf of the petitioner had submitted that the land of the petitioners could not be utilized by the respondents' department for construction of a bridge without paying any compensation.

The learned Advocate General had raised three preliminary objections. Firstly, that this petition is not maintainable as the petitioners had already filed civil suit in the court of learned Sub Judge, Chachoit at Gohar even though in the appeal the same has been permitted to be withdrawn. Secondly the petitioner had not raised any objection at the time of construction of a bridge on the land on which the petitioners' Gharat was situated. Thirdly the learned Advocate General had also submitted that the petition suffers from delay and laches since the land has been utilized in the year 1991-92.

I have heard the parties and perused the record.

The petitioners' land comprising old khasra No. 1486/2 new 914/1 was exchanged with old khasra No. 495/1 new 183/1 measuring 0-2-9 bighas for the construction of bridge. The petitioners had submitted an application in the Court of AC-Ist Grade, Tehsil Chachoit at Gohar, District Mandi, H.P. for correction of revenue entries. The application was allowed and the petitioners were recorded in possession of the land bearing khasra No. 495/1 measuring 0-2-9 bighas.

The petitioners had filed a civil suit for mandatory injunction on 16.5.2001. A finding has been recorded by the learned Sub Judge Ist Class, Chachoit at Gohar that as per the statement of PW-3, Patwari Halqua, he visited the spot and demarcation was conducted by him. The *tatima* Ex.PW-2/A was prepared under the supervision of Field Kanungo Sh. Mittar Dev (PW-3). The Statements of both the witnesses i.e. Patwari Halqua and Field Kanungo were recorded and on the basis of *tatima* Ex.PW-2/A it had come on record that on the suit land there was a pillar of the bridge. The DW-2 Patwari Halqua had also admitted in his cross-examination that on khasra No. 1485 there was a Gharat in the suit land. Thus, it is evident that on the land of the petitioners bearing khasra No. 1485 and new khasra No. 913 measuring 0-0-9 bighas a bridge was constructed.

The Supreme Court has held in Thimmappa Rai Vs. Ramanna Rai and others, 2007 (7) Scale 119 as under:

> **"An admission made by a party to the suit in an earlier proceedings is admissible as against him. Such an admission being a relevant fact, the courts below in our opinion were entitled to take notice thereof for arriving at a decision relying on or on the basis thereof together with other materials brought on records by the parties. Once a party to the suit makes an admission, the same can be taken in aid, for**

determination of the issue having regard to the provisions of section 58 of the Indian Evidence Act."

Now, the question which arises for determination is: Whether the petitioners land could be utilized by the State without paying any compensation in accordance with law?

The respondents have admittedly not paid any compensation to the petitioners though the land stood utilized for the construction of a bridge in the year 1991-92. The petitioners had served a notice upon the respondents and thereafter filed a civil suit though the same was withdrawn being time barred and not maintainable. The learned Additional District Judge had reserved the liberty to the petitioners to take out appropriate proceedings in accordance with law on the same cause of action.

The contention of the learned Advocate General that this is not maintainable after filing of the suit, is untenable. The learned Additional District Judge had reserved the liberty to the petitioners to take out appropriate proceedings on the same cause of action as is evident from the operative portion of the order dated 24.10.2005. The Hon'ble Supreme Court has held in ***Hari Chand & others Vs. Faridabad Complex Administration & others,*** (2005) 4 SCC 592 as under:

"Apart from the fact that the doctrine of *res judicata* as envisaged by section 11 CPC does not *stricto sensu* apply to the proceedings under Article 226 of the Constitution, it has no application to the facts of the case."

The second question raised by the learned Advocate General that the petitioners had acquiescenced by not immediately approaching the court in the year 1991-92 seeking redressal of their grievances is also untenable. It is the duty cast upon the State that as and when the land of the citizen is utilized for any public purposes, the citizen is to be paid the

due compensation by taking out the proceedings under the relevant provisions of law i.e. Land Acquisition Act, 1894. The respondents had agreed to exchange the land of the petitioners measuring 0-2-10 bighas for 0-2-9 bighas but the land comprising khasra No. 1485 (old) new 913 has been left out. The functionaries of the State i.e. Patwari Halqua and Field Kanungo have admitted that on the land of the petitioners, pillar of the bridge rests. The State cannot take the objection of acquiescence after depriving the citizen of his land holding.

The petitioners having constitutional right under Article 300-A of the Constitution of India to get the compensation for the utilization of their land by the State.

The plea raised by the learned Advocate General with regard to delay and laches is also untenable. The State is a welfare State and cannot take the plea of delay by utilizing the land of the petitioners in the year 1991-92 without paying any compensation. It was incumbent upon the respondents-State to immediately initiate proceedings under the Land Acquisition Act, 1894 for paying the compensation to the petitioners. The Supreme Court has held in ***State of U.P. Vs. Manohar,*** (2005) 2 SCC 126 as under:

> **"The grievance of the respondent before the High Court was that his name was high-handedly deleted from the revenue record and the revenue record thereafter showed the name of the appellants. He was dispossessed from the land and no compensation was paid, nor were any steps taken in law for acquiring the land. The respondent demanded an amount of Rs. 10 lakhs as compensation with interest from the date of dispossession.**
>
> **The appellants appeared through counsel before the High Court and produced certain records. In view of the correspondence, to which we have referred, between the officers of the State, the High Court came to the conclusion**

that the case made out by the respondent was acceptable and that the State should be directed to take steps to pay compensation to the petitioner within 3 months with appropriate interest in accordance with the law. The High Court contemptuously dismissed the arguments of the counsel for the appellant that the petitioner had already been paid the compensation but that the records evidencing such payment were not available as they had been "weeded out" due to the delay on the part of the respondent in approaching the court.

As a matter of fact, the appellants were unable to produce even a scrap of evidence indicating that the land of the respondent had been taken over or acquired in any manner known to law or that he had ever been paid any compensation in respect of such acquisition. That the land was thereafter constructed upon, is not denied.

Having heard the learned counsel for the appellants, we are satisfied that the case projected before the court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the lerned counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent

Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19 (1) (f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

> **"300-A. *persons not to be deprived of property save by authority of law*.- No person shall be deprived of his property save by authority of law."**

This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High

Court under Article 226 of the Constitution. In our view, the high Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us."

The upshot of the above discussion is that:

(i) the land of the petitioners comprising khasra No. 1485 old, new 913 measuring 0-0-9 bighas had been utilized by the State for the construction of a bridge without paying any compensation;

(ii) this petition is maintainable and the principle of *res judicata* will not be applicable.

(iii) the plea raised by the State of delay and laches is untenable.

Accordingly this writ petition is allowed. The respondents are directed to initiate acquisition proceedings under the Land Acquisition Act, 1894 for acquiring the land of the petitioners comprising khasra No. 1485 old, new 913 measuring 0-0-9 bighas, situated in Mohal Gohar, Tehsil Chachoit, District Mandi, H.P. within a period of six weeks from the date of receipt of copy of this judgment.

(Rajiv Sharma), Judge

May 30, 2007
Awasthi